

The Government Response to Parliamentary Scrutiny of the Draft National Policy Statement for Waste Water

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Department of Environment,
Food and Rural Affairs

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of the Planning Act 2008

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Introduction

Background

1. The Planning Act 2008 made provision for applications for development consent in respect of Nationally Significant Infrastructure Projects (NSIPs) to be examined and decided by the Infrastructure Planning Commission (IPC) and for the Government to set out policy on the consenting of such projects in National Policy Statements (NPSs).
2. However, following the election in May 2010, the Government announced that it intended to abolish the IPC. From April 2012 (following Royal assent consent of the Localism Act 2011) the Planning Inspectorate will hold examinations for development consent and will then make a recommendation to the Secretary of State (in the case of waste water applications this will be a joint decision by the Secretaries of State for the Department for Communities and Local Government and the Department for the Environment, Food and Rural Affairs). Both the Planning Inspectorate and Secretaries of State would need to follow the policy framework provided in NPSs, subject to limited exceptions set out in the Planning Act 2008.

Consultation and Parliamentary scrutiny of the draft Waste Water National Policy Statement 2010 – 2011

3. In November 2010 the Government published the draft Waste Water NPS and associated documents for public consultation and Parliamentary scrutiny. The public consultation was held between 16 November 2010 and 22nd February 2011. The Government received 43 responses to the public consultation.
4. The Environment, Food and Rural Affairs (EFRA) Committee published its report into the draft Waste Water NPS on 5 April 2011. On the same day a debate on the draft NPS was held in the Grand Committee House of Lords.
5. This document, made pursuant to s.9(5) Planning Act 2008, sets out the Government's response to the EFRA Committee report published on 5 April 2011, about the proposal for a NPS on waste water.
6. A separate Government Response to Consultation has been issued alongside this document, to respond to the public consultation that the draft Waste Water NPS underwent. Both this document and the response to consultation are available electronically at: <http://www.defra.gov.uk/environment/quality/water/sewage/>

Designation of National Policy Statements

7. A National Policy Statement must be "designated" by the Secretary of State, published and laid before Parliament before becoming the primary decision making document for considering applications for development consent. The Planning Act 2008 requires NPSs to undergo both Parliamentary scrutiny and public consultation before they can be designated.
8. However, to ensure increased democratic accountability the Government intends that NPSs should be approved by Parliament before they are designated. The Localism Act 2011 puts the approval of NPSs by Parliament on a statutory footing. Provisions in the Localism Act are that approval of an NPS can occur either by "deemed consent" after a "consideration period" of 21 sitting days passing without a vote, or if the House of Commons votes to approve the NPS within the 21 day period. As the appropriate sections of the Localism Act have not been commenced, we are proposing an informal process which is as similar as possible to the arrangements that are set out in the Localism Act.

Parliamentary scrutiny

Environment, Food and Rural Affairs Committee Proceedings

9. As part of its scrutiny of the revised draft Waste Water NPS published in November 2010 the EFRA Committee took oral evidence from:

- Richard Benyon MP, Parliamentary Under-Secretary for Natural Environment and Fisheries;
- Environment Agency;
- Ofwat;
- Greater London Authority;
- London Councils; and
- Thames Water.

Written evidence was also received from:

- Infrastructure Planning Commission;
- Consumer Council for Water;
- Natural England;
- Water UK;
- Save King Stairs Garden Action Group; and
- STOPtheSHAFT Putney and Barnes.

10. The EFRA Committee published its report on the draft Waste Water NPS on 5 April 2011. This, along with the uncorrected transcript of hearings and written evidence, can be found at: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/environment-food-and-rural-affairs-committee/inquiries/waste-water-nps/>

11. The EFRA Committee's report made 19 recommendations and conclusions. This report contains the Government's response to those recommendations and conclusions.

Grand Committee House of Lords

12. As part of the scrutiny into the draft Waste Water NPS a debate took place in the Grand Committee House of Lords on 5 April 2011.

EFRA Committee recommendations and Government response

The EFRA Committee's report made 19 recommendations and conclusions.

Recommendation 1:

We recommend that the draft NPS be revised to provide comprehensive and effective sign-posting to assist decision makers in accessing the full sources of policy advice to which the document refers. (Paragraph 13)

The Government's response:

We recognise the importance of having effective access to information and have increased the linkages and cross references within the Waste Water NPS accordingly.

Recommendation 2:

We recommend that the NPS be revised to define more clearly those terms whose interpretation is subjective so as to provide decision makers with clarity on their meaning in the context within which they are used. The NPS should also be amended to include guidance on the definition of what constitutes 'associated development' for waste water infrastructure purposes. (Paragraph 16)

The Government's response:

The planning policy set out in this NPS is consistent with existing planning policy under the Town and Country Planning regime and with policy for other major infrastructure of national significance set out in other NPSs (for energy, ports and hazardous waste developments), which have been subject to Parliamentary scrutiny, and in relation to the NPSs, formal consultation. To allay confusion, we consider that it is important to maintain consistency of planning policy across the major infrastructure regime and with town and country planning in general. As the Committee itself recommends (in recommendation 10), it is important not to unduly fetter the ability of the Infrastructure Planning Commission (IPC) or other decision maker to apply their judgement to the local circumstances of specific projects. This will inevitably leave some room for interpretation.

It is a matter for the IPC, or other decision maker, to decide on whether any particular development is associated development, depending on the circumstances of each individual case. In view of this, we consider that this is not something that can or should be prescribed in the Waste Water NPS. Section 115 (6) of the Planning Act 2008¹ states that, in deciding whether development is associated development, the IPC must have regard to any guidance issued by the Secretary of State. Examples of associated development in the context of waste water infrastructure projects are provided in the Department for Communities and Local Government existing guidance on associated development².

¹ <http://www.legislation.gov.uk/ukpga/2008/29/contents>

² <http://www.communities.gov.uk/publications/planningandbuilding/guidanceassocdevelopment>

Recommendation 3:

We recommend that the NPS be amended to remove inclusion in an Asset Management Plan as a criterion for proving need for a project. (Paragraph 23).

The Government's response:

Having regard to this recommendation, and the comments received by Ofwat as part of the formal consultation process, we have clarified the position around the demonstration of need. This now states that need has been demonstrated for projects that have been included in the Environment Agency's National Environment Programme.

The need for improvements in waste water infrastructure to meet environmental requirements is identified in reviews carried out by the Environment Agency. Necessary projects resulting from this are listed in its National Environment Programme (NEP). In drawing up the NEP the Environment Agency works closely with individual water companies and other government bodies. The NEP is included within a water and/or sewerage company's business plan that is submitted to the Water Services Regulation Authority (Ofwat), whose role is to scrutinise the overall plan and costings within it, taking schemes into consideration when setting price limits, where it considers them to be economically viable.

Recommendation 4:

Inclusion within the Environment Agency's National Environment Programme is less contentious a criterion for determining need. However, the NPS should set out clearly the process by which projects are accepted for inclusion in the Programme and are thereby deemed to be needed on environmental grounds. (Paragraph 24)

The Government's response:

We have taken on board the recommendation made by the Committee and have expanded the text on the NEP to provide greater context on the development of the Programme and how it relates to a water company's business plan.

Recommendation 5:

We recommend that Defra revises the NPS to set out in detail the basis of its assessment for the potential of alternative approaches to mitigate the need for new infrastructure, such as the increased use of sustainable drainage systems and water efficiency measures to reduce the production of waste water. (Paragraph 30)

The Government's response:

Through its consideration of alternatives to new waste water infrastructure, the Waste Water NPS sets out the basis on which Government is satisfied that investment in new infrastructure is necessary. In light of the Committee's recommendation, we have revisited the text to ensure its accuracy and that it is up to date, strengthening the detail where appropriate.

On the consideration of alternatives to the Thames Tunnel the Waste Water NPS draws on information in the Defra 2007 Regulatory Impact Assessment³, the Thames Tunnel Needs Report⁴ and the Defra 2011 Strategic and Economic Case for the Thames Tunnel⁵, which accompanied a Written Ministerial Statement to Parliament of 3 November, reaffirming the Government's support for a tunnel-based solution to the problems in the Thames Tideway. The Strategic and Economic Case sets out an overview of the proposed Thames Tunnel project and why it is needed, summarising the strategic and economic case for the Thames Tunnel, assessing alternative options and explains why the Government believes that a tunnel remains the preferred solution for dealing adequately with the untreated sewage that is polluting the River Thames.

We therefore consider that the Waste Water NPS provides a detailed analysis of the alternatives to new waste water infrastructure, both strategically and in relation to the Thames Tunnel.

In relation to Deephams Sewage Treatment Works, the text has been amended to show that the owner, Thames Water Utilities Limited, no longer has a preferred option for the redevelopment of the site. A number of strategic options to meet the need for the Deephams upgrade are being considered by Thames Water.

Recommendation 6:

We recommend that Defra undertakes within 12 months a full assessment of the potential national impact of widespread adoption of SuDs and water efficiency programmes for existing as well as new housing stock on future waste water infrastructure needs and that this be taken into account in any future revisions of the Waste Water NPS. (Paragraph 32)

The Government's response:

Schedule 3 to the Flood and Water Management Act, when commenced, will promote the use of sustainable drainage systems by requiring developers to have drainage plans for new developments and redevelopments approved by county and unitary local authorities. Water and sewerage companies are statutory consultees to the approval process. We intend to implement Schedule 3 as soon as possible and dates are being explored in the consultation on implementation of Schedule 3 which we launched on 20 December. The Act also requires local authorities to adopt those sustainable drainage systems which serve more than one property. In the short term Defra will fund the maintenance of adopted sustainable drainage systems whilst we explore long-term funding options. In parallel, Defra is developing a programme of work to incentivise SuDS retrofit in existing development. We hope local authorities and industry will lead elements of the work to deliver a shared vision for surface water management; together with other elements of climate change adaptation.

The Planning Act allows for the partial or full review of an NPS. We aim to review the Waste Water NPS in five years time, or before that time should there be a significant need to do so. This will take account of any changes to appropriate policy since the development of the original Waste Water NPS.

³ <http://archive.defra.gov.uk/environment/quality/water/waterquality/sewage/documents/overflows-ria.pdf>

⁴ http://www.thamestunnelconsultation.co.uk/doclib/needs-report/?came_from=411

⁵ <http://www.defra.gov.uk/environment/quality/water/sewage/overflows/>

Recommendation 7:

We recommend that the NPS be revised to provide clearer guidance for decision makers as to how they should balance the relative weights of different impacts and that it set out the criteria for making judgements on the extent to which short-term, local impacts should be tolerated in order to deliver long-term, wider gains. (Paragraph 35)

The Government's response:

The guidance within the Waste Water NPS on the weight to be afforded to the impacts of development provides a clear policy direction for both developers and the IPC, and its successor, when making and determining development consent applications.

Guidance on this issue within the Waste Water NPS is consistent with the policy for major infrastructure projects set out in all of the other NPSs and with existing planning policy under the Town and Country Planning regime. The relative weight to be given to particular impacts and the extent to which short-term, local, impacts should be tolerated in order to deliver long-term, wider gains will depend on the circumstances of a particular case, and are matters for the IPC or its successor to consider as part of their examination of any application for consent that is submitted.

Recommendation 8:

The wording of the NPS must fully reflect existing statutory provisions which decision makers would be expected to take into account in order to protect greenfield spaces. (Paragraph 37)

The Government's response:

We are confident that the Waste Water NPS has clear and robust guidance in relation to land use issues, which includes open space, green infrastructure and Green Belt. This guidance has been developed in conjunction with other Government Departments to ensure consistency with national policy and other NPSs, including having regard to Planning Policy Statements and the older-style Planning Policy Guidance documents.

Recommendation 9:

Approval of the costs which can be passed on to water and sewerage company customers is rightfully a core Ofwat function under its current regulatory remit and it is hard to see the benefits to be gained from duplicating this activity within the spatial planning process. In view of the alarming increases in estimated costs, Ofwat must fully utilise its regulatory powers to scrutinise the economic case for the Thames Tunnel project and be rigorous in determining which costs should be passed on to Thames Water's customers. (Paragraph 40)

The Government's response:

Ofwat accepts without reservation the EFRA Committee's recommendation that it must make full use of its regulatory powers to "scrutinise the economic case for the Thames Tunnel project and be rigorous in determining which costs should be passed on to Thames Water's customers". Ofwat has committed to challenging the estimated costs and making sure the scheme is delivered as cost-effectively as possible.

To achieve value for customers Ofwat is in regular dialogue with Thames Water about the project and is currently working with the company and other stakeholders to assess the feasibility of a range of financing and delivery options. Following the then Minister Ian Pearson's statement in 2007 supporting the construction of the Thames Tunnel to address the unsatisfactory overflows along the tideway, the regulator appointed consultants to provide expert advice and analysis on Thames Water's approach to cost estimation, risk appraisal and allocation and project management of the Thames Tideway programme. Last year it reappointed the consultants with a broader remit which additionally covered advice and analysis on scheme design, planning and procurement. Ofwat is also strengthening its in-house capacity to focus on the Thames Tunnel.

Recommendation 10:

We recommend that Ministers clarify that the NPS does not fetter the IPC or other decision makers' ability to apply their judgement so as to impose the standards most appropriate to the local circumstances of specific projects. (Paragraph 43)

The Government's response:

The purpose of the Waste Water NPS is to provide a framework for decision making on major waste water infrastructure projects that are of national importance. There will inevitably be potential tension between national goals and local goals and the purpose of the Waste Water NPS is to help guide the IPC, and its successor, when making these judgements.

The approach in the Waste Water NPS is consistent with the policy for other major infrastructure set out in other NPSs and with existing planning policy for decision making under the Town and Country Planning regime. It achieves an appropriate balance between framing the IPC's decision making and leaving it room for interpretation.

Recommendation 11:

The statement of Imperative Reasons of Overriding Public Interest (IROPI) justifying development of this NPS should be strengthened to reflect the considerable environmental benefits which a streamlined planning regime can deliver through enabling timely completion of necessary waste water infrastructure projects. (Paragraph 45)

The Government's response:

Section 5.2 of the Habitats Regulation Assessment⁶ (HRA) (which accompanies the Waste Water NPS) covers the Imperative Reasons of Overriding Public Interest in more detail. Taking on board the recommendation made, a cross reference to the HRA has been inserted at the end of paragraph 1.5.2 of the Waste Water NPS.

6 <http://archive.defra.gov.uk/corporate/consult/waste-water/101116-wastewaterpolicy-condoc-annex4.pdf>

Recommendation 12:

The draft NPS should be revised to make more detailed reference to increases in greenhouse gas emissions that waste water infrastructure projects could cause and to provide stronger guidance to decision makers on the mitigation measures they should consider imposing on project applicants. (Paragraph 48)

The Government's response:

Climate change mitigation is essential to minimise the impacts of climate change. As with any infrastructure project, there will likely be climate impacts, for example through increased energy use during construction and operation. Section 2.2 of the Waste Water NPS sets out the Government's policy objectives in relation to climate change mitigation and adaptation for waste water. These provide a clear statement of the mitigation measures that need to be considered in the development of waste water infrastructure of national significance.

The promoter of a waste water project will have to satisfy the IPC, or its successor, that the proposals have taken into account the potential impacts of climate change, and, wherever possible, appropriate mitigation action should be taken. Such information would be contained within the Environmental Statement which must accompany the application.

Recommendation 13:

We recommend that the Government urgently brings forward proposals to amend the Planning Act 2008 to bring large-scale sewage collection and transfer schemes such as the Thames Tunnel within the planning regime for Nationally Significant Infrastructure Projects. (Paragraph 53)

The Government's response:

In her written ministerial statement of 16 November 2010, Caroline Spelman indicated that she intended to bring the Thames Tunnel within the scope of the Planning Act by amending the thresholds in section 14(3), Part 3 of the Act. A 12 week consultation on introducing an Order to streamline the planning process for nationally significant wastewater transportation infrastructure projects concluded on 5 October 2011. Details on the consultation can be found at: <http://www.defra.gov.uk/consult/2011/07/12/wastewater-transportation/>

We expect to lay the Order before Parliament for its consideration early in 2012.

Recommendation 14:

We recommend that the draft NPS be revised to produce a purely generic document by removing Chapters 3 and 4 on the replacement of the Deephams Sewage Treatment Works and the Thames Tunnel. Defra may wish to provide material in an annex exemplifying points made in the NPS by reference to specific schemes, but it should be made clear that it does not constitute information to which decision makers must have regard when considering project applications. (Paragraph 61)

The Government's response:

An objective of the Planning Act is to clarify the policy framework for Nationally Significant Infrastructure Projects and it makes provision for location specific projects to be included in an NPS. The purpose of the Act is best fulfilled by acknowledging in the Waste Water NPS those projects that have been identified as required, Deephams Sewage Treatment Works in north London and the Thames Tunnel. Based on project-specific considerations, their inclusion provides a degree of certainty to developers as to what waste water infrastructure of national significance is required in the future. This approach has been subject to extensive consultation across Government and agreed with the Department for Communities and Local Government.

We have, however, strengthened the wording on the criteria of need (Chapter 2 Summary) to clarify that this relates to the two site specific elements of the Waste Water NPS. To reinforce this, we have moved certain text on Deephams and the Thames Tunnel to follow the strategic elements on need and alternatives in Chapter 2. The remaining text on the two sites has been moved to an Annex.

Recommendation 15:

We recommend that Defra include in any justification of new waste water infrastructure projects full explanation as to how they will help to meet national and European environmental requirements. The Department should also provide more detail on the potential alternative methods of achieving environmental outcomes, such as improved water quality, which new infrastructure is designed to achieve. (Paragraph 66)

The Government's response:

One of the key elements of the Waste Water NPS is to establish the need for waste water infrastructure of national significance. This forms the basis for consideration of development consent applications by the IPC, or its successor. In the case of the Waste Water NPS, the strategic need for improvements at the Deephams Sewage Treatment Works in north London and the Thames Tunnel is now set out in Chapter 2.

In finalising the Waste Water NPS we have had regard to the Committee's recommendation by enhancing the section (2.3.1 – 2.3.4) on statutory drivers, providing more prominence to the information on the statutory requirements to protect the environment and water quality. We have also strengthened the section (2.6.14 – 2.6.21) which considers the drivers for the Thames Tunnel.

With regards to alternative methods of achieving environmental outcomes you may wish to note the Government's response to recommendation 5.

Recommendation 16:

Defra should clarify in its response to this Report how it has taken into account responses to all aspects of its draft NPS consultation in order to fulfil the Government's requirement that formal consultation should take place at a stage when there is scope to influence the policy outcome. (Paragraph 68)

The Government's response:

The Government's response to the formal consultation into the draft Waste Water NPS was published at the same time as this report. This summaries the responses and sets out how they have been considered in the development of the final Waste Water NPS. It also includes, in an annex to the document, the Government's response to the Thames Tunnel Commission. The formal response can be found on the Defra website at: <http://www.defra.gov.uk/environment/quality/water/sewage/>

Recommendation 17:

We recommend that any future consultation on a draft NPS is given a higher profile, particularly with the local authority and planning communities. (Paragraph 70)

The Government's response:

We are satisfied that the consultation on the draft Waste Water NPS followed the principles set out in the Planning Act 2008 regarding consultation and publicity. It was subject to a 14 week consultation which was emailed out to statutory consultees (as set out in the Infrastructure Planning NPS Consultation Regulations 2009⁷), key interest groups and local interest groups made known to us by London Boroughs and neighbouring local authorities. The consultation documents were placed on the Defra consultation website and advertised on the Government's citizen orientated site, Directgov and the Thames Tunnel consultation website. Planning Aid also produced a short summary of the draft Waste Water NPS which was placed on their website. Arrangements were made with the Society for Chief Librarians to advertise the consultation by placing posters in libraries across England and Wales. In addition, two drop-in events, where the public had the opportunity to discuss aspects of the draft Waste Water NPS, were held in London in January and February 2011. These events were held in London as both potential Nationally Significant Infrastructure Projects were in London. Another event planned to take place in York was cancelled due to lack of interest.

Recommendation 18:

The draft NPS should not have been published for consultation and scrutiny until more complete. This NPS should not be designated until those deficiencies are corrected. (Paragraph 72)

The Government's response:

The Waste Water NPS has been developed in conjunction with other Government Departments and their Agencies to ensure consistency with national policy and other NPSs and was cleared for consultation by the Department for Communities and Local Government Quality Review Panel. We are confident that we met all necessary Whitehall procedures as part of this process.

⁷ <http://www.legislation.gov.uk/ukSI/2009/1302/regulation/3/made?view=plain>

Recommendation 19:

Given the importance of this NPS in delivering waste water and water quality objectives, we recommend that it be subject to a debate on the floor of the House of Commons on an amendable motion prior to designation. (Paragraph 73)

The Government's response:

The Planning Act 2008 requires us to set out the relevant period for Parliamentary scrutiny of an NPS. In the case of the draft Waste Water NPS the relevant period ended on 17 May 2011. Although the EFRA Committee made a recommendation that an amendable motion be held into the draft Waste Water NPS, it was not called before the House prior to the end of the relevant period. We have therefore focussed our efforts on producing a Waste Water NPS that is fit for purpose, through the careful consideration of the EFRA Committee's report and the responses to the formal consultation.



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